

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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DANITA HAYER,	:	Civil Action No. 07-251(PGS)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
UNIVERSITY OF MEDICINE and	:	NOTICE OF APPEAL
DENTISTRY OF NEW JERSEY	:	STEPHEN E. KLAUSNER
	:	
Defendant.	:	

NOTICE IS HEREBY GIVEN that Plaintiff, Danita Hayer, appeals to the United States Court of Appeals for the Third Circuit from the Judgement based upon the JURY VERDICT dated November 19, 2010, the ORAL DECISION dated February 25, 2011 and the ORDER filed February 28, 2001, signed by the Honorable Peter G. Sheridan, U.S.D.J. . (Copy annexed hereto).

STEPHEN E. KLAUSNER, ESQ., LLC
Attorney for Plaintiff

By: Stephen E. Klausner
Stephen E. Klausner

Dated: March 28, 2011

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2011, a true copy of the Notice of Appeal and Certificate of Service was forwarded via ECF filing to:

Honorable Peter G. Sheridan, U.S.D.J.
MLK Jr. Federal Building & Courthouse
50 Walnut Street, Room 2D
Newark, New Jersey 07101

- and -

Pamela Mosley Gresham, DAG
R.J. Hughes Justice Complex
P.O. Box 112
25 Market Street
Trenton, NJ 08625

By: Stephen E. Klausner
Stephen E. Klausner
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Danita Hayer
Plaintiff,

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 07 - 251 (PGS)

V.

University of Medicine and
Dentistry of New Jersey

Defendant.

 X Jury Verdict. This action came before the Court for a trial
by jury. The issues have been tried and the jury has rendered its
verdict.

IT IS ORDERED AND ADJUDGED that a judgment of NO CAUSE FOR
ACTION be and is hereby entered in favor of the defendant
University of Medicine and Dentistry of New Jersey,
and against the plaintiff Danita Hayer.

November 19, 2010
DATE


PETER G. SHERIDAN, U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DANITA HAYER,

Plaintiff,

v.

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY,

Defendant.

Civil Action No. 07-251 (PGS)

ORDER

This matter comes before the Court on Plaintiff Danita Hayer's ("Plaintiff") motion to vacate the jury verdict and for a new trial ("Plaintiff's Motion"). The Court, having reviewed the parties' submissions, and for the reasons set forth on the record on February 25, 2011;

IT IS on this 28th day of February 2011,

ORDERED that Plaintiff's Motion (Docket Entry 74) is denied.



PETER G. SHERIDAN, U.S.D.J

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY

3
4 DANITA HAYER,
5 PLAINTIFF

6 Vs.

CIVIL NO.
07-251 (PGS)

7 UNIVERSITY OF MEDICINE &
8 DENTISTRY OF NEW JERSEY,
9 DEFENDANT

10 FEBRUARY 25, 2011
11 CLARKSON S. FISHER COURTHOUSE
12 402 EAST STATE STREET
13 TRENTON, NEW JERSEY 08608

14 B E F O R E: THE HONORABLE PETER G. SHERIDAN
15 U.S. DISTRICT COURT JUDGE
16 DISTRICT OF NEW JERSEY

17 COURT'S OPINION ON PLAINTIFF'S MOTION FOR NEW TRIAL

18
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20
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22 Certified as true and correct as required
23 by Title 28, U.S.C. Section 753
24 /S/ Francis J. Gable
25 FRANCIS J. GABLE, C.S.R., R.M.R.
OFFICIAL U.S. REPORTER
(856) 889-4761

United States District Court
Trenton, New Jersey

1 THE COURT: This is Hayer versus the University of
2 Medicine and Dentistry. And Hayer brings a motion for a new
3 trial and for judgment as a matter of law, after the jury
4 no-caused her employment discrimination case.

5 The grounds in Mr. Klausner's brief on behalf of the
6 plaintiff are, the Court committed reversal error by: (1)
7 failing to strike testimony and evidence; (2) admitting
8 documents D-10, D-11 and D-12 into evidence, which violated
9 Rules 801, 803, 805, and 602 of the rules of evidence; and (3)
10 because, based upon the evidence, no reasonable jury could
11 find that Shawn Carr was treated more liberally than Hayer.
12 According to plaintiff this necessitate that the Court grant a
13 new trial.

14 And lastly, Mr. Klausner objects to the procedure
15 used to select the jury array because the jury array did not
16 have any African-Americans on it. The plaintiff believes this
17 violates her right to equal protection under the federal
18 constitution.

19 It should be noted that a new trial can be ordered
20 under Rule 59. The rule indicates that, the court may, on
21 motion, grant a new trial on all or some of the issues as
22 follows, "And after a jury trial for any reason for which a
23 new trial has been heretofore been granted, in any action at
24 law or in federal court in the past."

25 It should be noted that with regard to new trial

1 motions, such motions are infrequently given or granted, and
2 are generally disfavored. And the district court has wide
3 discretion on ruling on a motion for new trial. Sound
4 discretion is appropriate since it is the district court that
5 is able to observe the witnesses and follow the jury in a way
6 that an appellate court cannot replicate by reviewing the
7 record. That's at New Jersey Federal Civil Procedure, 2011,
8 Section 16.3, page 516. So, at any rate, the Court will use
9 that standard in evaluating this motion.

10 In addition, Mr. Klausner cites to Rule 50, which
11 allows the Court to judgment as a matter of law in a jury
12 matter. And with regard to such a judgment as a matter of
13 law, the case law is very similar. It indicates that under
14 Federal Rule 50, the motions for judgment as a matter of law
15 are granted "sparingly and circumspectly". That's at Section
16 16.2 of New Jersey Federal Civil Procedure, on page 509. And
17 it cites to a case *Patzig versus O'Neill*, 557 F.2d, 841 (Third
18 Circuit 1978). So, the Court will review all the motions with
19 those standards in mind.

20 The first issue -- and the most significant one --
21 is whether the procedure for selecting the jury array violated
22 the Equal Protection Clause of the Constitution. I should
23 note that informally I spoke with the jury manager in Trenton,
24 and counsel for the Clerk of the United States District Court,
25 District of New Jersey, in preparing this response. The Court

1 denies the motion with regard to a new trial based on jury
2 array for several reasons.

3 First, Mr. Klausner is a New Jersey attorney. He
4 sets forth reasons for a new trial based on jury array based
5 on statistical calculations as he calculated them. And there
6 is no evidence that Mr. Klausner is an expert in statistics,
7 and no evidence of whether his findings are reasonable or
8 adequate.

9 Mr. Klausner argues that the jury array is
10 unconstitutional because "the citizen population in Trenton
11 vicinage is comprised of 7.3 percent African-Americans", and
12 Mr. Klausner, using the Chi-Square Statistic, indicates that,
13 "The deviation between the number of African-Americans in the
14 jury pool and the 7.3 is infinitesimal."

15 He states in another section of his affidavit, that
16 he, "also employed the same Chi-Square Statistic which is used
17 to investigate whether distribution of categorical variables
18 differ from one another. Chi-Square Statistic compares to
19 tallies or counts of category responses between two
20 independent groups, using actual numbers not percentages, to
21 test the hypothesis that the jury pool is no different from
22 the citizen population of the African-Americans."

23 Before proceeding, I needed to know how many degrees
24 of freedom existed, since there are two categories. "The
25 degree of freedom is one of the Chi-Square Statistics test of

1 significance. It shows that the probability of the citizen
2 pool and the jury pool being statistically similar is
3 vanishingly small or is exceedingly unlikely. It is much less
4 than one in a trillion (one times 10 to the minus 12th power).
5 Hence the calculation is three times 10 to the minus 70.

6 Mr. Klausner makes this assertion even though there
7 is no evidence that Mr. Klausner is an expert in statistics.
8 In fact, many people attend law school because they are poor
9 in math. And as such, without evidence of expertise, there is
10 no reason to give his certification and his chart setting
11 forth such contentions any weight.

12 In other cases, the statistical evidence of jury
13 array was provided by expert testimony. See *Duren versus*
14 *Missouri*, 439 U.S. 357, at 364-65. There was a "statistical
15 presentation of evidence".

16 And then in the recent case of *Berghis versus Smith*,
17 130 Supreme Court, 1382, (2010), "Smith had two experts, a
18 statistician and an expert in demography and economics." That
19 is at page 1390. In this case, we have no expert evidence.
20 So, that the conclusions of Mr. Klausner are unreliable.

21 Second, Mr. Klausner's argument contends that the
22 municipality of New Brunswick, a city with many
23 African-Americans, was separate from the Trenton vicinage when
24 the vicinage was reconfigured several years ago. Klausner
25 states that, "The 2009 plan eliminates Middlesex County below

1 the Rairtan River, excluding the City of New Brunswick, which
2 was transferred to the Newark Division in 2009." Klausner's
3 assertion is mistaken. According to the jury manager, New
4 Brunswick lies within the Trenton vicinage, and its residents
5 are subject to the jury's call. So that's another imprecision
6 by Mr. Klausner.

7 Third, Mr. Klausner contends the lists used by the
8 Court for jury selection are overly restricted. The lists
9 that are used to comprise the jury pools are the voter
10 registration list, the driver's license registration list, the
11 state income tax filers list, and the homestead rebate
12 applicants list. Mr. Klausner suggests that unemployment
13 records and welfare records should be included instead of
14 homestead rebates.

15 The lists used by the jury office are very broad and
16 capture most of the individuals. According to the jury
17 manager, these are the same lists that the New Jersey Superior
18 Court uses. For certain, the lists used do not show any
19 discriminatory intent to exclude African-Americans, and they
20 have been previously approved by the Third Circuit and the
21 Administrative Office of the Court, which, from time to time,
22 approves the jury plan that is employed here in Trenton.

23 Mr. Klausner makes his statement based on his own
24 beliefs and not of any expert on jury array. So, once again,
25 his assertions are to be scrutinized.

1 Fourth, Mr. Klausner seems to indicate, although it
2 is not clear, that to be placed in a jury pool a person must
3 be listed on all four of the lists used by the Court. This is
4 incorrect. If a person is identified on a single list used by
5 the Court, his or her name is included on the master jury
6 list.

7 The fifth reason for denying Mr. Klausner's request
8 is that he indicates that 4.03 percent of the eligible
9 population of the jury wheel was African-American (page 35 of
10 his brief). According to the jury manager, the actual
11 percentage is 4.99 percent of the eligible population. Hence,
12 his statistical evidence as we indicated above is imprecise.

13 Six, the entire pool of jurors selected for the
14 period in which the trial occurred was accomplished randomly
15 and without any discriminatory motive. A report on race and
16 ethnicity, which is marked as Rider A, is incorporated into
17 this report. In that report it shows that the number of
18 blacks within the entire jury pool was 5.54 percent; the
19 number of whites was 84.13 percent; multi-race was .37
20 percent; other was 1.48 percent; and unknown is 4.43 percent.

21 And what is most important is that although this was
22 the statistics for the entire jury pool, Mr. Klausner is
23 correct that the persons selected for qualifications to sit on
24 the Hayer jury, either 25 or 30, were randomly selected, but
25 no blacks were part of the group. The random selection of the

1 entire pool is most appropriate. And it was done without any
2 discriminatory motive to exclude any type of race. So Mr.
3 Klausner's motion to declare a new trial based on the
4 inadequate number of African-Americans in the jury array is
5 denied.

6 Another area of concern to Mr. Klausner was the
7 admission of documents D-10, D-11 and D-12. Mr. Klausner
8 argues that documents, 10, 11 and 12, were inappropriately
9 admitted into evidence.

10 I reviewed the record. Mr. Klausner was the one who
11 requested that D-10, D-11 and D-12 be placed into evidence.
12 There was no objection from Ms. Gresham, his adversary. So,
13 without an objection, and based on his motion, all three were
14 placed into evidence.

15 At trial, the attorney, Mr. Klausner, must object,
16 rather than request admission of those documents in order to
17 have any meritorious argument for new trial or judgment as a
18 matter of law. He didn't do that. So, that request to grant
19 a new trial based on the admission of D-10, D-11 and D-12 is
20 denied.

21 Lastly, Mr. Klausner indicates that the testimony of
22 Laxmi Vazirani should have been denied. I'm not precisely
23 certain of Mr. Klausner's reasons. Ms. Vazirani was not one
24 of the most important witnesses. Certainly, her testimony was
25 not a major concern at trial.

1 At any rate, Ms. Vazirani, the EEO manager,
2 indicated during her testimony that she communicated with
3 Julia Friedman, Linda Barker, and Paul Novembre at the time.
4 Mr. Klausner feels that since Ms. Vazirani never interviewed
5 any of the plaintiff's witnesses with anyone else present, her
6 testimony should have been stricken as barred.

7 But it seemed to me that she was familiar with the
8 issue, she was there at the time the incident occurred, and
9 she testified as to what she knew about the case. I do not
10 see any major issue that would require me to reverse or to set
11 up a new trial because of Ms. Vazirani's testimony.

12 Mr. Klausner also indicates that the EEO guidelines
13 require an effective investigation of an incident, and Ms.
14 Vazirani did not conform with the guidelines. The guidelines
15 state, "Employers shall make clear to employees that it will
16 protect the confidentiality of harassment allegation to the
17 extent possible." In my view, an employer cannot guarantee
18 complete confidentiality since it cannot conduct an effective
19 investigation, it must reveal certain information to others.

20 However, in this instance, Ms. Vazirani was
21 conducting a confidential investigation, and she interviewed
22 those individuals privately and without anyone else present.
23 She engaged in an appropriate course of conduct. As a result,
24 Mr. Klausner's request for a new trial based on the testimony
25 of Ms. Vazirani is denied.

1 So, I reiterate the standard that we set forth
2 above, that these motions are granted sparingly, and the
3 granting of a new trial is a decision left to the sound
4 discretion of the trial judge. So that there doesn't seem to
5 be any reason, and certainly within my discretion, the case
6 went forward fairly to both parties, and the jury no-caused
7 the plaintiff.

8 Quite frankly, there was little credible evidence in
9 the case of any type of discrimination. And I believe I had
10 ordered Mr. Klausner a few times during the trial, that there
11 was a lack of discriminatory motive or actions by UMDNJ.
12 Motion denied.

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